

§218.171

(d) Regulations in this subpart are effective April 11, 2011 through April 11, 2016.

§218.171 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§216.106 and 218.176 of this chapter, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in §218.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in §218.170(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in §218.170(c) is limited to the following species, by Level B harassment only and the indicated number of times:

(1) Harbor porpoise (*Phocoena phocoena*)—56,415 (an average of 11,283 annually);

(2) Northern fur seal (*Callorhinus ursinus*)—220 (an average of 44 annually);

(3) California sea lion (*Zalophus californianus*)—570 (an average of 114 annually);

(4) Northern elephant seal (*Mirounga angustirostris*)—70 (an average of 14 annually);

(5) Harbor seal (*Phoca vitulina richardsi*) (Washington Inland Waters stock)—27,340 (an average of 5,468 annually); and

(6) Harbor seal (*P. v. richardsi*) (Oregon/Washington Coastal stock)—505 (an average of 101 annually).

§218.172 Prohibitions.

Notwithstanding takings contemplated in §218.171 and authorized by a Letter of Authorization issued under §216.106 of this chapter and §218.176, no person in connection with the activities described in §218.170 may:

(a) Take any marine mammal not specified in §218.171(c);

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(b) Take any marine mammal specified in §218.171(c) other than by incidental take as specified in §218.171 (c);

(c) Take a marine mammal specified in §218.171(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §216.106 of this chapter and §218.176.

§218.173 Mitigation.

When conducting RDT&E activities identified in §218.170(c), the mitigation measures contained in this subpart and subsequent Letters of Authorization issued under §216.106 of this chapter and §218.176 must be implemented. These mitigation measures include, but are not limited to:

(a) Marine mammal observers training:

(1) All range personnel shall be trained in marine mammal recognition.

(2) Marine mammal observer training shall be conducted by qualified organizations approved by NMFS.

(b) Lookouts onboard vessels:

(1) Vessels on a range shall use lookouts during all hours of range activities.

(2) Lookout duties include looking for marine mammals.

(3) All sightings of marine mammals shall be reported to the Range Officer in charge of overseeing the activity.

(c) Visual surveillance shall be conducted just prior to all in-water exercises.

(1) Surveillance shall include, as a minimum, monitoring from all participating surface craft and, where available, adjacent shore sites.

(2) When cetaceans have been sighted in the vicinity of the operation, all range participants increase vigilance and take reasonable and practicable actions to avoid collisions and activities that may result in close interaction of naval assets and marine mammals.

(3) Actions may include changing speed and/or direction, subject to environmental and other conditions (e.g., safety, weather).